HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 253 /06 (s/s)

Smt. Pushpa Nainwal
Vs.
State and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 20.03.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 253 (SS) OF 2006

Smt. Pushpa Nainwal,
W/o Dharmanand Nainwal,
D/o Goberdhan Pandey,
R/o 101/3, Avas Vikas Colony,
Bhoti-Parao, Haldwani (Nainital). .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary in the department of Home Affairs, Dehradun.
2. High Court of Uttaranchal at Nainital, through Registrar General.
3. District Judge, Pithoragarh. .....Respondents.

Sri T.A. Khan, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 20.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.10.2005 passed by the respondent no. 3 (Annexure No.1). The petitioner has further prayed for a writ of Mandamus commanding the respondents to appoint the petitioner under the provisions of Uttaranchal Recruitment of Dependents of Government Servants, Dying-in-Harness Rules, 1974 adopted by the Uttaranchal Adaptation and Modification Order, 2002 as a Class III employee under the control of the respondent no.3.

Briefly stated, the husband of the petitioner late Dharmanand Nainwal was appointed as Copyist under the

Control of the respondent no. 3 on 10.02.1987 at Civil Court, Pithoragarh.

According to the petitioner her husband was on duty till 12.01.1998 and thereafter he went on leave and thereafter on 05.02.1998, he informed that he is going to Lucknow regarding his treatment. However, on 21.02.1998, a report was lodged regarding the missing of the husband of the petitioner and now seven years have passed.

Petitioner has submitted that is well settled under Section 108 of the Indian Evidence Act that if a person is missing, he shall be deemed dead.

The petitioner has filed a suit for declaration regarding death of her husband and the same was decreed on 28.05.2005.

The petitioner has submitted that she has passed B.A. in 1995 from Govt. P.G. College, Pithoragarh and she is entitled to be appointed as a Clerk as per the provisions of Uttaranchal Recruitment of Dependents of Government Servants, Dying in Harness Rules.

Petitioner has moved applications on 02.07.2005, 16.06.2005, 18.08.2005 and 13.10.2005 for her appointment in place of her husband under the provisions of Uttaranchal Recruitment of Dependents of Government Servants, Dying in Harness Rules.

On 18.10.2005, the respondent no. 3 has rejected the application of the petitioner.

Petitioner has submitted that after the aforesaid incident, the whole family has come on the verge of starvation and is facing financial crisis.

In ***Naresh Kumar Vs. Union of India and others 2003 U.D., 167*** similar controversy has been decided, where it has been held as under:-

"8. The respondents have already rejected the claim of petitioner for providing appointment under Dying in Harness Rules, It is true that to give appointment under Dying in Harness Rules is not a matter of right, however, in the present case the ground of rejection as mentioned need consideration. The respondent authority while rejecting the application has stated that since the adequate amount of terminal benefit was paid to the family of the deceased, therefore, the petitioner is not entitled to get appointment under Dying in Harness Rules. This aspect has been considered by Division Bench of Allahabad High Court, Lucknow Bench in State Bank of India Vs. Ram Piyari and others 2001 (2) U.P. Local Bodies and Educational Cases (U.P.L.E.B.E.C.)page 1597 and the court held that the receipt of family pension or other terminal benefits by the widow can not be taken to be good ground for rejecting the case for appointment on compassionate ground. It is common knowledge that the window is entitled to family pension and other benefits in the even her husband dies in harness. If the plea of respondent is accepted, then no appointment can be made on compassionate ground and the scheme shall have no meaning. As such this ground for rejection is not sustainable."

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to

Keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a ordinary recruitment.

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact the family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, a writ of certiorari is issued quashing the order-dated 18.10.2005 passed by the respondent no.3 (Annesure-1). The matter is remanded back to the respondent no. 3 for reconsideration of the representation (Annexure No. 6 to the writ petition) of the petitioner within a period of two months from the date of presentation of the certified copy of the order after taking into consideration the family condition of the petitioner.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

20.03.2006
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